

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CABELA'S WHOLESALE, INC.,

Plaintiff

v.

MILLCREEK MARKETPLACE, LLC and
THE CAFARO COMPANY,

Defendants

)
) Docket No. 1:13-CV-00118-SJM
)
) (Assigned to Chief Judge Sean J. McLaughlin)
)
) ELECTRONICALLY FILED PLEADING
)
) **MOTION TO DISMISS COMPLAINT**
) **PURSUANT TO FED. R. CIV. P. 12(b)(6)**
)
)
) Filed on behalf of: Defendants,
) Millcreek Marketplace, LLC and
) The Cafaro Company
)
) Counsel of Record for these Defendants:
)
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FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CABELA'S WHOLESALE, INC.,)	Docket No. 1:13-CV-00118-SJM
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Plaintiff)	(Assigned to Chief Judge Sean J. McLaughlin)
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MILLCREEK MARKETPLACE, LLC and)	
THE CAFARO COMPANY,)	
)	
Defendants)	

MOTION TO DISMISS COMPLAINT
PURSUANT TO FED. R. CIV. P. 12(B)(6)

Defendants, Millcreek Marketplace, LLC and The Cafaro Company, hereby move to dismiss the Complaint of Plaintiff, Cabela's Wholesale, Inc. ("Cabela's"), pursuant to Fed. R. Civ. P. 12(b)(6) on the grounds that that the Complaint fails to state a claim upon which relief can be granted. In support of this motion, Defendants incorporate the following by reference:

- i Defendants' Brief in Support of Motion to Dismiss Complaint;
- i Letter of Intent dated February 28, 2013 between Cabela's and Millcreek Marketplace, LLC, which is referenced in Cabela's Complaint at ¶¶31-32, 40-41, and attached hereto as Exhibit A; and
- i March 27, 2013 email from Cabela's Real Estate Manager, Gary Rimington, to Gregory Baldwin, President of Baldwin Brothers, which is referenced in Cabela's Complaint at ¶45, and attached hereto as Exhibit B.¹

¹ Although a district court ruling on a motion to dismiss normally may not consider matters extraneous to the pleadings, "an exception to the general rule is that a 'document integral to or explicitly relied upon in the complaint' may be considered 'without converting the motion [to dismiss] into one for summary judgment.'" *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1426 (3d Cir. 1997) (citations omitted). Further, "a court may consider an undisputedly authentic document that a defendant attaches as an exhibit to a motion to dismiss if the plaintiff's claims are based on the document." *Pension Benefit Guar. Corp. v. White Consol. Indus., Inc.*, 998 F.2d 1192, 1196 (3d Cir. 1993).

WHEREFORE, Defendants, Millcreek Marketplace, LLC and The Cafaro Company, respectfully request that the Court dismiss Plaintiff's Complaint with prejudice.

Respectfully submitted,

KNOX McLAUGHLIN GORNALL &
SENNETT, P.C.

By: /s/ Richard A. Lanzillo

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